against an insolvent, a request to charge that if there was an agreement by defendant to buy plaintiff's claim against the insolvent, with the further understanding that the agreement should be reduced to writing, and the parties failed to reduce it to writing, then the agreement was not perfected, and the jury must find for defendant, was erroneous, and properly refused, as charging that, although there might have been a completed contract, yet if there was an understanding that it should be expressed in writing, and the parties failed to do so, plaintiff could not recover; there being no evidence that it was agreed that the contract should not be final until reduced to writing.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. §§ 67-71; Dec. Dig. § 34.* 1 Va.-W. Va. Enc. Dig. 759; 3 Va.-W. Va. Enc. Dig. 330.]

Error to Corporation Court of Danville.

Action by M. P. Burwell against John E. Hughes. Judgment for plaintiff, and defendant brings error. Affirmed.

Julian Meade, for plaintiff in error.
William Leigh and *Harris & Harris,* for defendant in error.

STANDARD MFG. CO., Inc., et al. *v.* S. M. PRICE MACHINERY CO., Inc.

June 13, 1912.

[75 S. E. 236.]

Corporations (§ 545*)—Insolvency—Preferences—Waiver or Loss of Right.—Stockholders of a corporation, who were accommodation makers and indorsers of the company's notes, which were secured by a deed of trust, paid a number of the notes, which were destroyed, and new notes issued to the stockholders therefor. An agreement was subsequently made between the corporation and its creditors, by which the creditors agreed to postpone payment of their debts in consideration of the stockholders' agreement that the creditors should be preferred in the distribution of profits or the assets of the company in the event of a sale; and, pursuant to such agreement, the property of the corporation was conveyed to trustees, who took charge of the business for the creditors. The trustees having failed to make a success of the business, the deed of trust was foreclosed, and the property purchased by one of the stockholders, who claimed the right to offset against the purchase price the notes issued in exchange for those secured by the deed of trust and paid by the

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

stockholders. Held, that whatever right the stockholders had to offset their indebtedness, or to be subrogated to the rights of the holders of the secured notes, was waived by the agreement that the other creditors should be preferred; and hence the entire purchase price should be distributed to the general creditors.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 2170-2175; Dec. Dig. § 545.* 3 Va.-W. Va. Enc. Dig. 590, 602.]

Appeal from Circuit Court of City of Norfolk.

Action by the S. M. Price Machinery Company, Incorporated, against the Standard Manufacturing Company, Incorporated, and others. From the decree, defendants appeals. Affirmed.

Frick & Williams, for appellants.
Peatross & Savage and *A. B. Carney,* for appellee.

FLANARY *v.* COMMONWEALTH.

June 18, 1912.

[75 S. E. 289.]

1. **Witness (§ 304*)—Privilege—Statutory Protection.**—A witness in a criminal proceeding cannot avail himself of the privilege against giving incriminating testimony afforded by Const., art. 1, § 8 (Code 1904, p. ccix), where a statute gives him full immunity against liability to prosecution for any unlawful act which he may disclose in such testimony.

[Ed. Note.—For other cases, see Witnesses, Dec. Dig. § 304.* 13 Va.-W. Va. Enc. Dig. 976.]

2. **Witnesses (§ 304*)—Privilege—Statutory Protection.**—On a criminal trial a witness was asked whether, after an election, he testified before the grand jury touching the violation of any clause or part of Code 1904, § 145a, and also touching the violation of any other election laws, to which he replied that he went before the grand jury and testified concerning breaches of the election laws. Held, that the answer, considered in connection with the question, showed that he had testified relative to violations of section 145a, and hence was entitled to whatever immunity was afforded by subsection 9, § 145a, Code Supp. 1910, providing that no witness, giving evidence in any prosecution or other proceeding under that act, shall be proceeded against for any offense against that act, or against any other election law, committed by him at or in connection with the same election.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1051, 1052; Dec. Dig. § 304.* 13 Va.-W. Va. Enc. Dig. 974.]

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.